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SUPREME COURT, STATE OF COLORADO

Case No: 93 SA 017

On Appeal from the District Court, City and County of Denver
H. Jeffrey Bayless, Judge: Case No. 92 CV 7223

BRIEF AMICUS CURIAE OF COALITION OF ASSOCIATIONS OF MENTAL HEALTH PROFESSIONALS

RICHARD G. EVANS, ANGELA ROMERO, LINDA FOWLER, PAUL BROWN, JANE DOE, MARTINA NAVRATILOVA, BRET TANBERG, PRISCILLA INKPEN, JOHN MILLER, THE BOULDER VALLEY SCHOOL DISTRICT RE-2, THE CITY AND COUNTY OF DENVER, THE CITY OF BOULDER, THE CITY OF ASPEN, AND THE CITY COUNCIL OF ASPEN,

Plaintiffs-Appellees,

v.

ROY ROMER, as Governor of the State of Colorado, GALE A. NORTON, as Attorney General of the State of Colorado, and the STATE OF COLORADO,

Defendants-Appellants.

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MEMBER ORGANIZATIONS
in the
COALITION OF ASSOCIATIONS OF MENTAL HEALTH PROFESSIONALS
(Alphabetical Order)

Colorado Association for Marriage and Family Therapy

Colorado Chapter, National Association of Social Workers

Colorado Lesbian and Gay Psychologists

Colorado Psychological Association

Colorado Psychiatric Society

Colorado Society for Clinical Social Work

Colorado Society of Clinical Specialists in Psychiatric Nursing

Colorado Women Psychologists

Denver Psychoanalytic Society

Executive Council, Rocky Mountain-Plains Region,
American Association of Pastoral Counselors

National Association of Social Workers

National Federation of Societies for Clinical Social Work, Inc.

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I. SUMMARY OF ARGUMENT

This Amicus Curiae Brief discusses aspects of this case about which the members of the Coalition of Associations of Mental Health Professionals have specialized knowledge. These areas include the following:

1. The nature of gay men, lesbians and bisexuals renders them an independently identifiable group, based on their sexual orientation.

2. The term "sexual orientation", when referring to a homosexual sexual orientation, refers to a complex interpersonal and intrapersonal approach to life and the establishment of relationships parallel to the more common heterosexual orientation. A homosexual orientation manifests itself in a variety of ways, ranging from celibacy, to marriage (which, while not legally sanctioned, may involve a religious and legal commitment on the part of the parties), to rearing children, and to participation in extended families.

3. Amendment Two stigmatizes gay, lesbian and bisexual people by sanctioning invalid stereotypes and irrational fears, and it increases the risk and perceived risk of violence, victimization and prejudice and interposes obstacles to their psychological development.

4. Finally, no rational basis exists for Amendment Two, and its origin lies in irrational fears and prejudices. As with racial and sexual discrimination, the perpetuation of these fears and prejudices will cause harm to individuals and to society.

This Court should affirm the trial court's preliminary injunction, prohibiting Appellants from declaring Amendment Two in force and from enforcing Amendment Two, to prevent the injury that will occur if it were given effect.

II. ARGUMENT

A. AS THE TRIAL COURT PROPERLY FOUND, GAY MEN, LESBIANS AND BISEXUALS COMPRISE AN INDEPENDENTLY IDENTIFIABLE GROUP WARRANTING LEGAL RECOGNITION.

An extraneous condition, such as race, wealth, tax status or military status may not be the basis for denial of a fundamental right. *See Kramer v. Union Free School District*, 395 U.S. 621, 632-33, 89 S.Ct. 1886, 1892 (1969); *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668, 86 S.Ct. 1079, 1082 (1966); *Carrington v. Rash*, 380 U.S. 89, 93, 85 S.Ct. 775, 778 (1965); *Gomillion v. Lightfoot*, 364 U.S. 339, 346, 81 S.Ct. 125, 130 (1960). The trial court found that sexual orientation constitutes such an extraneous condition and that gay men, lesbians and bisexuals are an independently identifiable group. Transcript Of Proceedings, January 15, 1993 (hereinafter "Transcript of Order") 23:6; 28:23-24. Relevant scientific evidence in the field of mental health supports the trial court's conclusion.

1. Gay Men, Lesbians and Bisexuals Are Defined By A Number Of Characteristics. But The Class Is Discrete.

"Sexual orientation" signifies a cognitive identification and subjective emotional sense of oneself on a continuum of homosexual/bisexual/heterosexual identity. Byne and Parsons, *Human Sexual Orientation: The Biologic Theories Reappraised*, 50 ARCH. GEN. PSYCHIATRY 228, 119 (1993).

Sexual orientation must be distinguished from at least three other related processes: (1) biological sex, which is determined by genetic and hormonal factors and is generally

unambiguous at birth;[1] (2) gender identity, which is formed very early in life and is defined by a person's own sense of his or her gender; and (3) gender roles, which are formed later and are socially defined, *e.g.*, by the tasks which one performs in society.[2] Herek, *Myths About Sexual Orientation: A Lawyer's Guide To Social Science Research*, 1 LAW & SEXUALITY 133, 149 (1991) [hereinafter Herek, *Myths*]. Sexual orientation is different from all of these factors.

A person that is a biological female may identify herself entirely as a woman (gender identity) and function as a mother (gender role) but still be, and identify herself as, a lesbian (sexual orientation). The fact that she is a lesbian relates to any or all of the following factors: (1) sexual behavior with partners of the same gender, (2) ongoing emotional and physical attraction to partners of the same gender, (3) private personal identity based on a particular sexual orientation; (4) public identity based on a particular sexual orientation, which manifests itself by acknowledging one's sexual orientation to friends, family and other social groups; and/or (5) identification with a community that identifies itself as having a particular sexual orientation. *Id.* at 134.

Amicus Colorado For Family Values, for example, appears to argue that no identifiable class exists in this case, because the class is defined exclusively by its behavior. *See* Brief Amicus Curiae Of Colorado For Family Values at pp. 8-13. This position is inconsistent with the generally accepted definition of sexual orientation. Rather, one must distinguish between homosexuality and homosexual behavior. Byne and Parsons, *supra*, *Human Sexual Orientation: The*

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[1] *But see* Money, *Sin, Sickness Or Status? Homosexual Gender Identity And Psychoneuroendocrinology*, 42 AM. PSYCHOLOGIST 384 (1987) (examining the effect of various anomalous biological sexual characteristics on sexuality).

[2] Many gender roles are no longer as clearly defined as they once were.

Biologic Theories Reappraised, 50 ARCH. GEN. PSYCHIATRY at 229. Behavior is only one aspect of several in a person's sexual orientation, as described above.

As Herek points out in his article, persons in prisons and other sex-segregated institutions may engage in sex with persons of their own gender but still identify themselves personally and publicly as heterosexual. Herek, *Myths* at 135. The same is true, for example, of adolescent boys. West, *Homosexuality And Social Policy: The Case For A More Informed Approach*, 51 LAW & CONTEMP. PROBS. 181, 183-185 (1988). Alternatively, some gay men and lesbians identify themselves personally and publicly as homosexual without ever having engaged in overt sexual behavior. Herek, *Myths* at 135. Clearly, a heterosexual would have no difficulty identifying him- or herself as heterosexual, even if he or she were celibate. The same is true of gays, lesbians and bisexuals.

More than just behavior defines the class of gay men, lesbians and bisexuals. Perhaps the most important of Herek's criteria is the ongoing physical and emotional attraction, *i.e.* the love, that gay men, lesbians and bisexuals feel to persons of the same gender. When combined with a person's public and private identity, these criteria are sufficient to identify gay men, lesbians and bisexuals for purposes of adjudicating claims of discrimination and in the context of the present action.

2. Sexual Orientation Is Not Generally A Chosen Characteristic.

J. Michael Bailey's studies of gay male, lesbian and bisexual twins support the view that sexual orientation is not chosen. Bailey, Pillard *et al.*, *Heritable Factors Influence Sexual Orientation in Women*, 50 ARCH. GEN. PSYCHIATRY 217 (March 1993); Bailey and Benishay,

Familial Aggregation of Female Sexual Orientation, 150 AM. J. PSYCHIATRY 272 (1993); Bailey and Pillard, *A Genetic Study of Male Sexual Orientation*, 48 ARCH. GEN. PSYCHIATRY 1089 (1991).

In three separate studies, Bailey and others found a correlation in sexual orientation between identical twins of gay men and lesbians, which was not present between non-identical twins or between non-twin siblings or adoptive siblings that were raised in the same household. Other factors, such as "childhood gender nonconformity" (*i.e.* gender role nonconformity), did not correlate with the variable of heredity in a significant way. All of the studies suggest that female or male homosexuality occurs consistently in genetically identical twins at a level higher than nonidentical siblings raised in the same home.

Most social and behavioral scientists see sexuality as being shaped by a complex interaction of biological, psychological and social forces. Herek, *Myths* at 151. William Byne, for example, has criticized the biological studies that have found direct relationships between specific behaviors and anatomical conditions, on the one hand, and sexual orientation, on the other. *See generally* Byne, *Human Sexual Orientation: The Biologic Theories Reappraised*, 50 ARCH. GEN. PSYCHIATRY 228 (1993). Byne proposes an "interactionist" model, which would account for heritability as a function of individuals' methods of dealing with social and other environmental factors. *Id.* at 236-37. Thus, while Byne disputes whether biological characteristics are directly responsible for an individual's sexual orientation, he proposes, "genetic factors can be conceptualized as indirectly influencing the development of sexual orientation." *Id.* at 237.[3]

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[3] *Cf.* Transcript of Proceedings at p. 89:24-90:7 (Gonsiorek testifying that genetic and environmental factors influence sexual orientation, just as they do height); in addition, *see generally* Burr, *Homosexuality And Biology*, THE ATLANTIC MONTHLY 47-65 (March 1993).

On the other hand, a 1989 Note in the Harvard Law Review puts the question of causation to one side entirely. Note, *Custody Denials to Parents in Same-Sex Relationships: An Equal Protection Analysis*, 102 HARV. L. REV. 617 (1989). The author of the article argues that some, even if not all, people choose their sexual orientation, and that gay men, lesbians and bisexuals should not be viewed as "helpless in the face of their same-sex attractions." *Id.* at 622. Nevertheless the author argues, "Rather than predicating heightened scrutiny on assertions that gay people cannot change, a more positive approach would be to apply heightened scrutiny because gay people should not be required to change." *Id.* (emphasis added).

Although the origins of homosexual orientation are complex, the status of the members of the class, which the trial court properly identified, merits their protection as an identifiable, if not a suspect, class.

3. Sexual Orientation Should Not Be Changed.

In December 1973 the American Psychiatric Association resolved, "homosexuality per se implies no impairment in judgment, stability, reliability or general social or vocational capabilities," and that in most psychiatrists' judgment, "homosexuality per se does not constitute any form of mental disease." American Psychiatric Association, Resolution (December 15, 1973). Before then, homosexuality had been classified as a "sexual deviation" equivalent to pedophilia or sadism. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF

MENTAL DISORDERS (SECOND EDITION) 44 (1968).[4] This action by the Association precluded further scientific consideration of homosexuality as a "sexual deviation".

Accordingly, the American Psychiatric Association withdrew homosexuality *per se* altogether from its list of classified disorders. Succeeding editions of the Association's diagnostic manual listed only ego-dystonic homosexuality[5], which resulted in anxiety, as a disorder. Finally, in November 1986, the Assembly of District Branches of the American Psychiatric Association approved the final draft of a revised diagnostic manual, which removed even "ego-dystonic homosexuality" as a classifiable disorder. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (THIRD EDITION - REVISED) xxii, 426 (1987). Among the reasons given by the American Psychiatric Association for removal of any classification of homosexuality are (1) that the former classification suggested that homosexuality itself was a disorder, and (2) that in the United States almost all gay men and lesbians go through a phase when their sexual orientation is ego-dystonic. *Id.* This phase results from the individual's self-hatred because of his or her internalization of society's prejudices against the group with whom he or she identifies. In the present case, society's prejudices are referred to as "homophobia", and an individual's internalization of social homophobia is "internalized homophobia". *See generally* Walters and Simoni, *Lesbians and Gay Male Group Identity Attitudes and Self-Esteem: Implications*

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[4] The DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, in its various editions and revisions, is nearly universally recognized by mental health professionals, and not just psychiatrists, as defining the universe of possible mental health disorders.

[5] "Ego-dystonic", when used in the diagnostic manual in the context of homosexuality, refers to "a sustained pattern of overt homosexual arousal that the individual explicitly states has been unwanted and a persistent source of distress." AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (THIRD EDITION) 281 (1980).

for Counseling, 40 J. OF COUNSELING PSYCHOLOGY 94 (1993) *and see* discussion at pp. 12-16, *infra*.

At present all of the groups that form the amicus coalition have enacted statements requiring their members to treat people equally regardless of their sexual orientation. For example, the policy of the American Psychiatric Association, which members of the Colorado Psychiatric Society follow, states, "A psychiatrist should not be a party to any type of policy that excludes, segregates or demeans the dignity of any patient because of ethnic origin, race, sex, creed, age, socioeconomic status, or sexual orientation." AMERICAN PSYCHIATRIC ASSOCIATION, THE PRINCIPLES OF MEDICAL ETHICS, WITH ANNOTATIONS ESPECIALLY APPLICABLE TO PSYCHIATRY (1992). Similarly, the Colorado Psychological Association has adopted a policy that "reaffirms the fundamental dignity and worth of all individuals, including Lesbians, Gays and Bisexual persons, the rights of those individuals to equal and integrated protection under the law and to fair and just treatment in all aspects of human life." Colorado Psychological Association, Social Action (June 19, 1992). The Standards of Practice of the National Federation of Societies for Clinical Social Work, which are followed by members of the Colorado Society for Clinical Social Work, state, "Clinical social workers shall not be a party to any type of discrimination, and shall not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnic origin, color, sex, creed, age, national origin, religion, marital status, socioeconomic status, political belief, sexual orientation, mental or physical handicap, or any other preference or personal characteristic, condition, or status." NATIONAL FEDERATION OF SOCIETIES FOR CLINICAL SOCIAL WORK,

STANDARDS OF PRACTICE FOR CLINICAL SOCIAL WORK (1991).[6] The other members of the coalition have similar policies.

Given the fact that homosexuality is no longer considered to be a disorder in any of these mental health care professions and given that all of the organizations affiliated with amicus coalition have policies prohibiting discrimination based on sexual orientation, the unilateral imposition by the therapist or counselor of the goal of changing the sexual orientation of the client or patient is considered unethical.

In a recent study evaluating self-esteem, authors evaluated gay male, lesbian and bisexual people according to whether (1) the people viewed the world as largely non-homosexual and hostile to homosexuals or (2) the people were more capable of viewing the world from a gay-affirming point of reference. Walters and Simoni, *supra, Lesbian and Gay Male Group Identity Attitudes and Self-Esteem: Implications for Counseling*, 40 J. OF COUNSELING PSYCHOLOGY at 95. The authors concluded that a gay man's or lesbian's request for reparative therapy, which would purport to "repair" the person's sexual orientation, should be viewed as a natural consequence of the phase of development toward resolution of his or her sexual orientation identity. *Id.* at 97. The therapist or counselor should assist the client in becoming comfortable with him- or herself, rather than inhibiting the natural developmental process of the client's acceptance of sexual orientation.

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[6] The policy of the National Association of Social Workers states, "The social worker should not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, color sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition or status." NATIONAL ASSOCIATION OF SOCIAL WORKERS, CODE OF ETHICS (1980). The policies of other members of the amicus coalition are attached to the coalition's motion for leave to file this brief.

Id.: *see also* Reiter, *Sexual Orientation, Sexual Identity, and the Question of Choice*, 17 CLINICAL SOCIAL WORK JOURNAL 138 (1989). This approach to counseling is consistent with the American Psychiatric Association's elimination of any diagnostic category for homosexuality and with the non-discrimination policies of the coalition members.

Another author discusses the lack of success experienced by behavior modification therapists that have used electrical shock and other forms of aversive therapy to attempt to "cure" homosexuals. Green, *The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis*, 16 J. OF PSYCHIATRY & LAW, 537, 555-569 (1988). *Cf.* D. RIMM AND J. MASTERS, BEHAVIOR THERAPY 371-414 (1974). Such articles describe procedures that are inhumane when viewed in light of contemporary attitudes about sexuality. These "treatments" are contraindicated and unethical, according to the standards of the organizations that belong to the amicus coalition because they are damaging to clients' mental and physical well-being.[7]

During the hearing on the preliminary injunction, Dr. Gonsiorek testified, "Some things are clear. Sexual orientation, whatever its cause is, biological, environment[al], or some combination, appears to be set in place fairly early in life. As I said before, usually between four and seven years of age is what's posited for that." Transcript of Proceedings 90:15. *See* Money, GAY, STRAIGHT, AND IN-BETWEEN 124-25 (1988)("Overall, it would appear that the most important formative years for [sexual orientation] are those of late infancy and prepubertal childhood . . ."). On cross-examination, Dr. Gonsiorek testified that a request by a client to change sexual orientation

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[7] *See id.* at 564 *citing* Freund, *Some Problems in the Treatment of Homosexuality*, in BEHAVIOR THERAPY AND THE NEUROSES (Eysenck ed. 1960), describing the consequences of "reparative" therapy.

should be evaluated in light of the person's clinical diagnosis. *Id.* at 138:13. Dr. Gonsiorek said that the literature would suggest that attempting to change a person's sexual orientation, even in response to a patient's request, would be inappropriate, unless a doctor permits all people to prescribe their own treatment plans, "across the board." *Id.* at 138:19. *See also* Isay, *On the Analytic Therapy of Homosexual Men*, 40 THE PSYCHOANALYTIC STUDY OF THE CHILD 235 (1985).

A person's sexual orientation, as distinct from biological sex, gender identity or gender role, is not, and should not be seen as being, subject to change. The organizations that make up this amicus cannot unilaterally encourage their homosexual or bisexual clients to try to adopt a heterosexual orientation, any more than they could encourage a heterosexual client to change his or her sexual orientation. This is true even if clients suffer emotional or physical harm from discrimination. The trial court has properly considered the class of gay men, lesbians and bisexuals as an identifiable class, and its determination is consistent with these organizations' professional and ethical standards.

B. AMENDMENT TWO WILL CAUSE SUBSTANTIAL HARM TO COLORADO CITIZENS.

1. Amendment Two Threatens Substantial Harm To Gay Men, Lesbians and Bisexuals.

The trial court found that because Amendment Two is unconstitutional, Plaintiffs were entitled to injunctive relief. Transcript of Order at 19:16 (irreparable harm), 20:15 (public interest). In addition, however, facts in the record support independent findings on the harm that will be caused by Amendment Two. *See generally* testimony of John Gonsiorek, Ph.D., Transcript of

Proceedings 72 *et seq.* In addition, the scientific literature underlying Dr. Gonsiorek's testimony supports a conclusion that these harmful effects will be severe and far-reaching.

At the hearing on the preliminary injunction, Dr. Gonsiorek testified that laws that discriminate against gay male, lesbian and bisexual citizens cause psychological harm, because such laws codify society's homophobic prejudices and disrupt the individual processes of integration and adaptation necessary for these citizens to overcome internalized homophobia. Transcript of Proceedings 113:15-114:16. In the absence of this integration and adaptation, gay men, lesbians and bisexuals are prone to feelings of loneliness, depression and other adverse psychological consequences. *Id.* at 115:1. Gonsiorek also testified that a public policy that encourages discrimination perpetuates anti-gay views in the public arena. *Id.* at 115:11. Perpetuation of these views as a result of state-sponsored policy may lead to increased victimization and violence against Colorado's homosexual and bisexual citizens. In addition, Dr. Gonsiorek testified, "the sheer terror of violence is psychologically disruptive for people, and in addition, the sense that one can be set upon without recourse often makes people feel very insecure about their place in the world." *Id.* at 115:5. Both the problem of increased internalized homophobia and the threat of increased victimization of gay men, lesbians and bisexuals are harms of such magnitude that the preliminary injunction is necessary to prevent them.

a. Amendment Two threatens substantial injury by sanctioning continuing, and possibly increased, internalized homophobia and by inhibiting the psychological development of gay men, lesbians and bisexuals.

Discrimination, prejudice and hostility against homosexuals in this country is pervasive and well-documented. *See, e.g.*, Herek, *Stigma, Prejudice and Violence Against Lesbians*

and Gay Men in HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY 60 (J. Gonsiorek and J. Weinrich eds. 1991): Gonsiorek, *Mental Health Issues of Gay and Lesbian Adolescents*, 9 J. ADOLESCENT HEALTH CARE 114, 117 (1988). Societal prejudice and hostility against homosexuals is often called "homophobia". Reiter, *supra*, *Sexual Orientation, Sexual Identity, and the Question of Choice*, 17 CLINICAL SOCIAL WORK JOURNAL at 165-167. Homophobia has been characterized as "any belief system which supports negative myths and stereotypes about homosexual people. More specifically, it can be used to describe ... belief systems which hold that discrimination on the basis of sexual orientation is justifiable ..." Aguero, Bloch and Byrne, *The Relationships Among Sexual Beliefs, Attitudes, Experience, and Homophobia*, 10 J. HOMOSEXUALITY 95, 96 (1984)(citing Morin and Garfinkle, *Male Homophobia*, 34 J. OF SOCIAL ISSUES 29 (1978)). Homophobia is a "ubiquitous aspect of contemporary social mores and cultural attitudes." Malyon, *Psychotherapeutic Implications of Internalized Homophobia in Gay Men*, 7 J. HOMOSEXUALITY 59, 60 (1981-82, Nos. 3/4) [hereinafter "Malyon"] (citing WEINBERG, SOCIETY AND THE HEALTHY HOMOSEXUAL (1972)).

Internalized homophobia occurs as a result of the "socialization of the incipient homosexual individual", which "nearly always involves an internalization of the mythology and opprobrium which characterizes current social attitudes toward homosexuality." Malyon, *supra* at 60. The "rejection of homosexual proclivities" and the "suppression of homoerotic promptings" in the homosexual adolescent have varied and unfortunate consequences, including an interruption of the process of identity formation. *Id.*; *see also* Malyon, *The Homosexual Adolescent: Developmental Issues and Social Bias*, J. OF CHILD WELFARE 321-330 (1981). In addition, feelings of self-contempt and self-loathing are common. Gonsiorek, *supra*, *Mental Health Issues of Gay and*

Lesbian Adolescents, 9 J. ADOLESCENT HEALTH CARE 114, 117 (1988). The stigma, *i.e.* hostility at a cultural level, of being a homosexual in our society can make it very difficult for homosexuals to overcome these negative feelings and achieve identity integration and a mature capacity for intimacy. Malyon, *supra* at 61; *see also* Hetrick and Martin, *Developmental Issues and Their Resolution for Gay and Lesbian Adolescents*, 14 J. HOMOSEXUALITY 25 (1987).

The acceptance of negative stereotypes before one becomes a conscious member of a stigmatized group results in the special likelihood of developing self-disapproval. Crocker and Major, *Social Stigma & Self-Esteem*, 96 PSYCHOLOGICAL REV. 608, 619 (1989). Thus, "low self-esteem is common among homosexual individuals during adolescence, when sexual preference [*sic*] is typically discovered and, hence, the homosexual label is first applied to the self ...." *Id.* (citing Bell, Weinberg and Hammersmith, SEXUAL PREFERENCE: ITS DEVELOPMENT IN MEN AND WOMEN (1981)).

As the gay, lesbian or bisexual adolescent matures into adulthood, he or she may continue to suffer from fear of discrimination, and either avoid, deny or hide his or her intimate relationships from family and friends. Such denial can "create strains in the relationship and, when it prevents the partners from receiving adequate social support, may have a deleterious effect on psychological adjustment." Kurdek, *Perceived Social Support in Gays and Lesbians in Cohabiting Relationships*, 54 J. PERSONALITY & SOC. PSYCHOLOGY 504 (1988); Murphy, *Lesbian Couples and Their Parents: The Effects of Perceived Parental Attitudes on the Couple*, 68 J. COUNSELING AND DEV. 46 (1989).

It is only when the homosexual begins to accept his or her sexual orientation, and thus to integrate his or her identity, that self-esteem increases, stress on relationships decreases, and

feelings such as guilt, shame, anxiety, depression, and feelings of worthlessness are reduced. Sophie, *Internalized Homophobia and Lesbian Identity*, 14 J. HOMOSEXUALITY 53 (Nos. 1/2 1987); Crocker & Major, *supra*. Hammersmith and Weinberg, *Homosexual Identity: Commitment, Adjustment and Significant Others*, 36 SOCIOMETRY 56, 58 (1973). Achieving greater visibility in the community at large has also been linked to higher levels of identity integration and feelings of self-worth. *See* Herek, *Myths* at 145 (citing Bell and Weinberg, HOMOSEXUALITIES: A STUDY OF DIVERSITY AMONG MEN AND WOMEN, 139-216 (1978)); Hammersmith and Weinberg, 36 Sociometry at 77-78.

Revealing the existence of one's sexual orientation and of any intimate same-sex relationship to friends, family and co-workers (often described as part of the "coming out" process) may reduce or eliminate these problems, as the person no longer has to fear discovery. Stress from lying about the relationship is relieved. Unfortunately, coming out creates its own problems: the men and women who are in the identified intimate relationship risk personal rejection, discrimination and even violence. *See, e.g.*, Herek, *Stigma, Prejudice and Violence Against Lesbians and Gay Men*, *Homosexuality* at 60; Herek, *Hate Crimes Against Lesbians and Gay Men*, 44 AM. PSYCHOLOGIST 948; Special Issue: *Violence Against Lesbians and Gay Men*, 5 J. INTERPERSONAL VIOLENCE 267-543 (1990). *See especially* Berrill, *Anti-Gay Violence and Victimization in the United States: An Overview*, 5 J. INTERPERSONAL VIOLENCE 274 (1990). *See also* discussion at 16-18, *infra*.

If Amendment Two is enacted, the likelihood that discrimination against homosexuals and bisexuals will continue or increase is clear from the very language of the Amendment, which singles out homosexuals and bisexuals for different treatment from heterosexuals, and which

invalidates the efforts by Aspen, Boulder, Denver, Telluride and Crested Butte to prohibit discrimination against members of this group. Societal views that are inimical to homosexuals and bisexuals will continue, rather than cease, further impeding the identity acceptance so crucial to the healthy psychological development of gay, lesbian and bisexual citizens. Ongoing stigmatization by the larger community can serve to offset or even negate any gains that homosexuals and bisexuals may achieve in reducing feelings of alienation or powerlessness. *See* Fein and Nuehring, *Intrapsychic Effects of Stigma: A Process of Breakdown and Reconstruction of Social Reality*, 7 J. HOMOSEXUALITY 3 (1982); Bobys and Laner, *On the Stability of Stigmatization*, 8 ARCH. OF SEX. BEHAV. 247, 259 (1979), (citing Greenberg, *The Effects of a Homophile Organization on the Self-esteem and Alienation of Its Members*, 1 J. HOMOSEXUALITY 313, 316 (1976)). Attempts by gays, lesbians and bisexuals to become visible in the larger community will be stalled, as the legitimate fear of victimization increases; this can further inhibit the successful transition from self-loathing to self-acceptance. *See, e.g.*, Paul, *Minority Status for Gay People: Majority Reaction and Social Context*, in HOMOSEXUALITY: SOCIAL, PSYCHOLOGICAL AND BIOLOGICAL ISSUES 351, 358-63 (Paul, Weinrich, Gonsiorek & Hotvedt eds., 1982).

b. Amendment Two threatens substantial harm by sanctioning condemnation of gays, lesbians and bisexuals, with a concomitant increase in violence and victimization.

Amendment Two may be perceived as giving State approval to discrimination against homosexuals and bisexuals. This may lead to increased victimization as well. Violence against gay men, lesbians and bisexuals has been a measurable problem for a number of years. Herek, *Hate Crimes Against Lesbians and Gay Men*, 44 AM. PSYCHOLOGIST 948 (1989). Although this

victimization is not a new problem, its severity may be increasing. Berrill and Herek, *Violence Against Lesbians and Gay Men*, 5 J. INTERPERSONAL VIOLENCE 269, 270 (1990); Berrill, *Anti-Gay Violence and Victimization in the United States*, 5 J. INTERPERSONAL VIOLENCE 274, 275-80, 288 (1990) ("survey data provide what is perhaps the best evidence to show that anti-gay violence is increasing, at least in certain areas."). In fact, the Anti-Violence Project of the Gay and Lesbian Community Center of Colorado reports a 129% increase in hate crimes in 1992 compared to 1991; the national total of bias-related incidents for 1992 was 3,070, with 38% of the total attributed to Colorado and Oregon, the two states that had anti-gay initiatives on the 1992 ballot. Forty percent of Colorado's incidents occurred after the passage of Amendment Two in November, 1992. Anti-Violence Project, Gay and Lesbian Community Center of Colorado, Press Release (March 11, 1992). Studies have also shown (1) that violence against lesbian and gay youths is disproportionately high as compared to adults and (2) that this violence has its roots in "societal attitudes and discriminatory practices." Hunter, *Violence Against Lesbian and Gay Male Youths*, 5 J. INTERPERSONAL VIOLENCE 295, 299 (1990).

These groups continue to be the targets of widespread institutional prejudice and, unlike members of racial, ethnic or religious minorities, who also suffer from prejudice, homosexual and bisexual citizens are unique in that overt discrimination and intolerance are often officially condoned by governmental, religious and social institutions. Herek, *supra*, *Hate Crimes Against Lesbians and Gay Men*, 44 AM. PSYCHOLOGIST at 949. Some authorities believe that many acts of violence and victimization against homosexuals go unreported because of institutional support of prejudice and discrimination against them. *Id.* Anti-gay hate crimes and violence against homosexuals "must be understood, in part, as a logical outgrowth of this pervasive norm of

intolerance. This climate of condemnation fosters anti-gay hate crimes and keeps them invisible. It discourages individuals from disclosing their homosexual orientation and from reporting bias crimes motivated by anti-gay prejudice." *Id.*

Amendment Two feeds into already existing prejudice and puts a state stamp of approval on stigmatizing homosexuals and bisexuals. By doing so, it fuels existing discrimination, and the members of the amicus attest that enactment of Amendment Two is likely to lead to increased victimization and violence against the homosexual and bisexual citizens of this state.

2. Amendment Two Sanctions The Stigma Attached To Homosexuality And Is Therefore Detrimental To The Public Interest In Attempting To Prevent Youth Suicide And In Promoting Healthy Emotional Development.

During the hearing in the trial court Dr. Gonsiorek also testified that the American Psychological Association opposes discriminatory laws like Amendment Two, because "It's simply good public health." Dr. Gonsiorek stated,

> To the extent that anti-gay prejudice keeps individuals from developing a support system in the gay and lesbian community such individuals become impoverished and cannot access the kind of support that would be useful and necessary to be optimally adjusted psychologically.

Transcript of Proceedings 112:2. Examples of the psychological problems that result from this lack of access to a community support system include an increase in gay and lesbian youth suicide, and stress on the heterosexual children of gay, lesbian and bisexual adults. Thus, contrary to contentions by other amici, public health considerations weigh in favor of enjoining enforcement of Amendment Two.

a. The suffering of gay and lesbian adolescents may increase through the homophobia engendered by Amendment Two.

One of the most frightening and compelling harms that may result from Amendment Two is an increase in the rate of suicide attempts among adolescents exploring their sexual orientation. As is discussed above, gay and lesbian youths are susceptible to internalized homophobia and may suffer difficulty in identity formation. Adolescent identity formation is fraught with obstacles, such as low status among peers, difficulties with social integration and alienation, and gay and lesbian youth are particularly subject to these problems. Martin, *Learning to Hide: The Socialization of the Gay Adolescent*, 10 ADOLESCENT PSYCHIATRY 52 (1982). These obstacles, exacerbated by homophobia, have been linked to the greater rate of suicide attempts among homosexual adolescents than among heterosexual adolescents. Schneider, Farberow and Kruks, *Suicidal Behavior in Adolescent and Young Adult Gay Men*, 19 SUICIDE AND LIFE THREATENING BEHAVIOR 381, 382-83 (1989).[8]

The United States government has itself completed a study of suicide among youth with similar results. U.S. DEPT. OF HEALTH AND HUMAN SERVICES, 3 REPORT OF THE SECRETARY'S TASK FORCE ON YOUTH SUICIDE (1989). The study found that gay adolescents were two to three times more likely than their heterosexual peers to attempt suicide, accounting for as many as 30% of completed youth suicides each year. Of 45,000 youth suicides, as many as 30%, or 15,000, were thought to have committed suicide for reasons related to their sexual orientation.

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[8] *See also* Saunders and Valente, *Suicide Risk Among Gay Men and Lesbians*, 11 DEATH STUDIES 1 (1987) (discussing empirical studies of suicide attempts reported by gay and lesbian adults, with six times more attempts among African-American and Caucasian homosexual men than among heterosexual controls, and two times more attempts among Caucasian lesbians).

Another recent study has made similar findings. Remafedi, Farrow and Deisher, *Risk Factors for Attempted Suicide in Gay and Bisexual Youth*, 87 PEDIATRICS 869 (1991). Remafedi's study identified certain risk factors for suicide attempts among gay and bisexual youth, including personal or interpersonal turmoil about homosexuality. In fact, one-third of first attempts occurred during the same year that the subjects identified their homosexuality. The authors concluded that the "apparent connection between sexual milestones and [suicide] attempts may be a clue to the appropriate timing of suicide prevention efforts." *Id.* at 873. "Compared with older persons, early and middle adolescents may be generally less able to cope with the isolation and stigma of a homosexual identity." *Id.* at 874.

Enactment of Amendment Two places state approval on the belief that gay, lesbian and bisexual adolescents are somehow less deserving than other societal members and may cause some teenagers to feel even more hopeless, despondent and isolated. Fear of discovery and stigmatization have traditionally prevented the youths at risk from seeking greatly needed social supports to help them through this period. Often mental health workers are unable to reach them before it is too late. The gains that have been made in recent years to help these youth address the difficult issues of sexual orientation and self-acceptance are endangered by Amendment Two — now, in addition to having to overcome the problem of access to those children in need of help, the mental health worker must also overcome the government's affirmative statement that the youth's emerging identity is unworthy of protection.

b. Children of gay men, lesbians, and bisexuals may be left without social support systems upon which to rely in dealing with the stigma of parental homosexuality.

The stigmatizing effects of Amendment Two can have negative effects on the heterosexual children of gay, lesbian, and bisexual parents as well. Herek's review of empirical research in this area suggests that "two tentative conclusions" may be drawn: (1) that children recognize the existence of social stigma and (2) that they feel their parent's orientation must be hidden from others. Harassment, such as teasing and insults, sometimes occurs. Herek, *Myths* at 160 (citing Lewis, *Children of Lesbians: Their Point of View*, 25 SOC. WORK 198, 199 (1980)); Green and Bozett, *Lesbian Mothers and Gay Fathers* in HOMOSEXUALITY: RESEARCH IMPLICATIONS, *supra* at 197; Bozett, *Gay Fathers: A Review of the Literature*, 18 J. HOMOSEXUALITY 137, 143 (1989). Lewis has suggested, however, that "an important consequence of anti-gay social stigma may be that it often leaves children of lesbian and gay parents without larger social support systems in which they can talk about their own feelings and concerns related to their parents' homosexuality." Lewis, *supra*, *Children of Lesbians: Their Point of View*, 25 SOC. WORK at 199. Thus, children of homosexual and bisexual parents are beset by the stress of having to hide their parent's sexual orientation because of social bias, much the same as gays, lesbians, and bisexuals are stressed from the effort of hiding their own sexual orientation and their relationships as a result of this same homophobia. This additional stress is yet another adverse effect that Colorado's children will suffer, unless enactment of Amendment Two is enjoined.

C. THE STATE HAS NO INTEREST, RATIONAL OR OTHERWISE, IN GIVING EFFECT TO AMENDMENT TWO.

Based upon its finding of an identifiable group and a fundamental right, the trial court properly found that the State will be required to demonstrate that it has a compelling state interest in enacting Amendment Two at the trial of this matter. Transcript of Order at 29:25. *See Palmore v. Sidoti*, 466 U.S. 429, 104 S.Ct. 1879 (1984); *Hunter v. Erickson*, 393 U.S. 395, 392, 89 S.Ct. 557, 561 (1968); *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627 (1967). Negative attitudes alone are not even sufficient to provide a rational basis for enacting legislation. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 447, 105 S.Ct. 3249, 3258-59 (1985). In fact, the State has no rational interest in enacting Amendment Two, and the relevant psychological literature shows that purported interests offered by the State and amici aligned with it are based on irrational prejudice and outright falsehood.

1. Stereotypical Images Of Gay Men, Lesbians And Bisexuals Are Invalid.

Mental health care professionals recognize that "lesbians and gay men have been the object of some of the deepest prejudice and hatred in American society". Melton, *Public Policy and Private Prejudice*, 44 AM. PSYCHOLOGIST 933, 934 (1989). For example, many people believe that sexual orientation manifests itself as a confusion of gender role; thus, a random sample of 103 adults inaccurately believed that male homosexuals' gender roles are less masculine than lesbians'. Taylor, *Conceptions of Masculinity and Femininity as a Basis for Stereotypes of Male and Female Homosexuals* in HOMOSEXUALITY AND SOCIAL SEX ROLES 37 (Ross ed. 1983).

More typically, people like the proponents of Amendment Two use widely held misconceptions about gay men, lesbians and bisexuals to promote a purportedly "moral" view that is factually insupportable. At trial, Dr. Gonsiorek testified that common stereotypes, in addition to gender role confusion, describe gay men and lesbians as unstable, unable to form relationships, likely to molest children and unable to sustain employment. Transcript of Proceedings 105:16-21; *see also* Melton, *supra*, *Public Policy and Private Prejudice*, 44 AM. PSYCHOLOGIST at 934. These stereotypes are invalid.

a. Gay men, lesbians and bisexuals are no more likely to molest children.

In her 1977 campaign to repeal an antidiscrimination ordinance in Dade County, Anita Bryant named her organization "Save Our Children" and warned that "a particularly deviant-minded [gay] teacher could sexually molest children". Herek, *Myths* at 153 (citing BRYANT, THE ANITA BRYANT STORY 114 (1977)). Similar claims are made in the Colorado For Family Values literature that is in the record below. *See* Exhibits 11 and 12; *see also* Brief Amicus Curiae of the Institute in Basic Life Principles at 18. In fact, studies indicate that gay men are no more likely than heterosexual men to molest children. Herek, *Myths* at 156.

Child sexual molestation, pedophilia, does not relate to sexual orientation, any more than heterosexual rape is related to heterosexuality. Both are acts of violence and domination of innocent victims, and neither depends on the sexual orientation of the perpetrator. The primary problem with early studies concerning the sexual orientation of child molesters is that a molestation is considered "homosexual" if the biological sex of the perpetrator is the same as that of the victim, irrespective of the perpetrator's sexual orientation. Herek, *Myths* at 153-154. Herek identifies one

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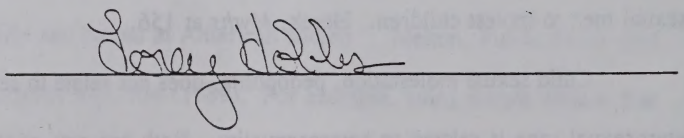

study that referred to the male molesters in its sample as homosexual whenever the victim was a biological male. First of all, the sample included in the study was not representative, because only seven subjects were included; thus, one may question the validity and reliability of the study. *Id.* In addition, the author of the study admitted to Herek that only three of the seven men in his sample were gay. *Id.* Similarly, the studies of Paul Cameron, which have been referred to regularly by the proponents of Amendment Two, suffer from these and other methodological defects. *See* Herek, *Myths* at 155-56.

In fact, researchers have found that homosexuals are less likely to be aroused by children of their own gender than are heterosexuals by children of the opposite gender. Groth and Birnbaum, *Adult Sexual Orientation and Attraction to Underage Persons*, 7 ARCH. OF SEXUAL BEHAVIOR 175 (1978); Freund, Langevin *et al.*, *Heterosexual Aversion in Homosexual Males*, 122 BRIT. J. PSYCHIATRY 163, 165 (1973). Rather than being an empirical truth, the stereotype of the gay man as a child molester ascribes characteristics to gays similar to the "evolutionary backwardness, limited intellectual capacity, and even excess sexual drive", which were attributed to African-Americans before the civil rights movement. Duckitt, *Psychology and Prejudice, A Historical Analysis and Integrative Framework*, 47 AM. PSYCHOLOGIST 1182, 1183 (1992) [hereinafter Duckitt, *Psychology and Prejudice*]. *Cf.* Transcript of Proceedings 108:24. Just as older stereotypical characterizations of African-Americans were used to further discrimination against that group, this stereotype about homosexuals has been advanced to instill fear and disgust among voters and others today.

No scientifically supportable probability of child molestation provides a basis for the enactment of Amendment Two.

b. Gay men, lesbians and bisexuals are not afflicted with a mental illness.

The mental health disciplines have historically contributed to societal prejudice against lesbians, bisexuals and gay men, most obviously by treating homosexuality as a mental disorder. Melton, *supra*, *Public Policy and Private Prejudice*, 44 AM. PSYCHOLOGIST at 934-35. However, as the foregoing discussion has made clear, the organizations making up the amicus coalition have all evaluated the scientific evidence and have adopted policies condemning discrimination against gay men, lesbians and bisexuals. *See* discussion, *infra* at pp. 8-9. In addition, the American Psychological Association has asked its members "to take the lead in removing the stigma of mental illness that has long been associated with homosexual orientations". American Psychology Association, Resolution (January, 1975).

The classical psychological study showing that homosexuality is not inherently associated with psychopathology is that of Evelyn Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. OF PROJECTIVE TECHNIQUES at 18 (1957). Hooker's independent experts rated male homosexual and heterosexual subjects' overall adjustment and found that the subjects were equally well adjusted. Hooker, *supra*, *The Adjustment of the Male Overt Homosexual*, 21 J. OF PROJECTIVE TECHNIQUES at 22. When asked, the independent experts could not discriminate between homosexual and heterosexual men based on psychological indicators at a level better than chance. *Id.* at 23.

Since Hooker's study, numerous other studies have shown no demonstrable psychological difference between homosexuals, bisexuals and heterosexuals. Thus, in their review of the literature in 1978, Hart and others found, "[A]mong male homosexuals there are slight

differences in qualities such as self-esteem . . . when they are compared to heterosexuals. However, such differences are within the normal range . . . ." Hart, Roback *et al.*, *Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature*, 39 J. OF CLINICAL PSYCHIATRY 604, 607 (1978). With respect to lesbians, the same review actually found that they were better adjusted than their heterosexual counterparts. *Id.* The authors went on to explain that the differences were too small to draw any conclusions and that they probably resulted from sampling differences. *Id.* No clinical psychopathology was demonstrated in any of the non-patient homosexual populations that were studied. *See also* Isay, *Fathers and Their Homosexually Inclined Sons in Childhood*, 42 THE PSYCHOANALYTIC STUDY OF THE CHILD 275 (1985).

Based on these studies and the policies of the amicus' organizations, no lack of psychological or mental well-being provides a basis for the enactment of Amendment Two.

c. Gay men, as well as lesbians and bisexuals, are not demonstrably more promiscuous than heterosexuals.

Finally, advocates of laws prohibiting anti-gay discrimination frequently argue that gay men, especially, are incapable of forming stable relationships and that they prefer to engage in casual, promiscuous sexual encounters in bathhouses and public restrooms. West, *supra*, *Homosexuality and Social Policy: The Case for a More Informed Approach*, 51 LAW & CONTEMP. PROBS. at 189.

At the hearing in the trial court, Dr. Gonsiorek testified at length on this point:

> Studies generally suggest that homosexual and heterosexual individuals both desire relationships, and that they are both capable of them. And that there are same-sex relationships of long duration that have been described and documented. And that there is no

> significant difference in relationship satisfaction between homosexual and heterosexual couples.

Transcript of Proceedings 94:13. In fact, monogamy and faithfulness of partners may relate more to the gender identity of the partners in a relationship than it does to the sexual orientation of the partners. *See* Transcript of Proceedings 97:2 (Gonsiorek testifying that gay male couples are less monogamous than heterosexual couples, which are less monogamous than lesbian couples). In terms of relevant criteria, those in same-gender couples tend to express feelings about relationships similar to heterosexuals', including (1) liking and love for their partner; (2) description of the best and worst things about their relationship; and (3) adjustment and satisfaction with the relationship. Herek, Myths at 162.

In fact, in the case of lesbians at least, children in households that include a mother's lesbian partner have a richer, more open and stable family life than do those where the lesbian mother raises her children as a single parent. Kirkpatrick, *Clinical Implications Of Lesbian Mother Studies*, INTEGRATED IDENTITY 201, 204 (Coleman ed. 1987) (citing Kirkpatrick, Roy *et al.*, *Lesbian Mothers And Their Children: A Comparative Study*, 51 AM. J. OF ORTHOPSYCHIATRY, 545 (1981)). Thus, not only do gay men and lesbians enter into sustained relationships, their doing so may operate to benefit others, as well. The contrary argument cannot provide a basis for Amendment Two.

2. Irrational Stereotypical Images, Rather Than A Government Interest, Constitute The Basis For Enacting Amendment Two.

Research shows that persons that express negative attitudes toward gay men and lesbians also tend to express negative attitudes toward African-Americans and to adhere to sex-role expectations that constrain possibilities for women. Bierly, *Prejudice Toward Contemporary*

Outgroups as a Generalized Attitude, 15 J. OF APPLIED SOCIAL PSYCHOLOGY 189 (1985). Thus, prejudice against homosexuals is not isolated but regularly exists as a part of an integrated belief system that includes other prejudices as well. *See also* Reiter, *Developmental Origins of Antihomosexual Prejudice In Heterosexual Men and Women*, 19 CLINICAL SOCIAL WORKER JOURNAL 163 (1991).

In his survey and analysis of the literature on prejudice, John Duckitt identifies seven separate phases of psychological analysis of prejudice. Duckitt, *Psychology And Prejudice, passim.* Up to the 1920's racial prejudice was seen as a natural response to backward and inferior races; therefore, prejudice was not examined, only the differences between the groups were. *Id.* at 1185. Only in the nineteen-twenties did psychological researchers discover that prejudice does not relate to actual facts about the different racial group (*Id.* at 1185), and in the succeeding decades researchers studied the psychodynamic "causes" of prejudice, the personality characteristics of the "prejudiced person", the social and political causes of prejudice, and the cognitive manifestations of prejudice through stereotyping, based on the status of the "out" group (*Id.* at 1185-86).

Bierly, *supra*, concludes that prejudice against women, African-Americans and homosexuals coexists because these are "outgroups", *i.e.* groups outside of the dominant economic and political group. *Id.* at 197. "It would seem that more intolerant people do not have a 'favorite' outgroup but that prejudice is quite global." *Id.* "Prejudice is associated with discriminatory behavior that directly restricts the quality of life of others who are less economically and socially powerful." *Id.*

It is the purpose of fundamental rights equal protection, of the kind used by the trial court, to prevent one group from using its power, combined with "traditional" values, to the

disadvantage of another. *See* Sunstein. *Sexual Orientation and the Constitution: A Note on the Relationship Between Due Process and Equal Protection*, 55 U. CHI. L. REV. 1161, 1168 (1988). "Statutes and regulations that discriminate on the basis of sexual orientation often reflect fear and hostility that are not susceptible to rational justification." *Id.* at 1176.

The State has failed to advance any interest to justify Amendment Two. This failure on the State's part demonstrates that social and personal prejudice based on stereotypes, "not subject to rational justification," were the true basis for enacting Amendment Two. Because the State cannot provide any government interest to support the enactment of Amendment Two, aside from fear, hostility and irrational prejudice, Plaintiffs have shown a reasonable probability of success on the merits. The trial court's order granting the preliminary injunction should be affirmed, and the case should be remanded for trial.

III. CONCLUSION

Amendment Two is directed at a single, identifiable group of Colorado citizens based on their sexual orientation. Their sexual orientation is defined by their attraction to others of the same gender and to their identity; it is not a matter of behavior. The amendment denies fundamental rights based on status, which is neither generally chosen nor changeable.

The existence of Amendment Two will increase the adverse psychological effects gay men, lesbians and bisexuals suffer, by sanctioning prejudice and condoning discrimination. If the amendment is given effect, violence against gay men, lesbians and bisexuals will likely increase, and adolescent suicide will be more difficult to prevent.

No state interest justifies Amendment Two. Instead, Amendment Two is based on irrational fear and prejudice against homosexuals and bisexuals. Courts have protected groups like this from discrimination in the past, and the trial court properly protected them in this case.

The members of the Coalition emphasize the importance of considering scientific evidence concerning both the nature of gay men, lesbians and bisexuals and the imminent threat to them if the amendment goes into effect. The Coalition believes that the detrimental effect of the law cannot be justified by any interest the State has offered, and the Coalition requests that the trial court's decision be affirmed and that the case be remanded for trial, according to the terms of the trial court's order.

Respectfully submitted this 3d day of May, 1993.

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CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of May, 1993, a true and correct copy of the foregoing Brief Amicus Curiae of Coalition of Associations of Mental Health Professionals[9] was placed in the United States mail, postage prepaid, addressed to:

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[9] Amici are lodging an appendix of authorities with the Supreme Court with this brief. Because of the size of the appendix, amici have not provided the appendix to all counsel of record but only to principle counsel for the parties to the trial court action. Copies of the index to the appendix are being provided to all counsel of record, and upon request of the court or a party or the court, amici will provide the appendix to any other counsel.